

MARK J. BENNETT 2672  
Attorney General of Hawaii

HERBERT B.K. LAU 2591  
Deputy Attorney General  
Department of Attorney  
General, State of Hawaii  
Labor Division  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: 586-1450

Attorneys for Complainant Director  
of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2010-20
	) (Inspection No. 313078818)
DIRECTOR, DEPARTMENT OF LABOR	)
AND INDUSTRIAL RELATIONS,	)
Complainant,	) STIPULATION TO WITHDRAW CITATION
	) ISSUED ON JULY 12, 2010; EXHIBIT "A";
	) APPROVAL AND ORDER
vs.	)
	)
B.E.S.T. FARMS, INC.,	)
	)
Respondent.	)
	)

---

**STIPULATION TO WITHDRAW  
CITATION ISSUED ON JULY 12, 2010**

Complainant Director of Labor and Industrial Relations ("Director") and Respondent B.E.S.T. FARMS, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about February 17, 2010, the Director, by and through the State of Hawaii's

Occupational Safety and Health Division (“HIOSH”), inspected the Respondent’s workplace located at 66-1411 Lalamilo Farm Lot Road, Kamuela, Hawaii, 96743.

As a consequence of said inspection, the Director, through HIOSH’s Administrator, issued a Citation and Notification of Penalty on July 12, 2010 (“Citation”) to the Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,050.00. See Exhibit A.


The Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case the parties, by and through their respective representatives, stipulate and agree as follows:


1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes (“HRS”).
2. The Citation issued on July 12, 2010 against the Respondent, including the \$1,050.00 penalty, is withdrawn.
3. This Agreement shall become a final order of the Director.
4. The Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).
5. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, October 29, 2010.

B.E.S.T. FARMS, INC.

  
CHARLENE NAKAGAWA  
Its:

APPROVED AS TO FORM:

  
HERBERT B.K. LAU  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

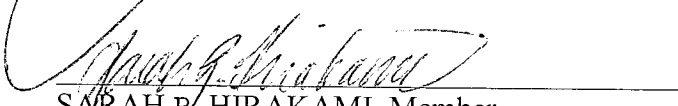
  
PEARL IMADA IBOSHI

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 405

DATED: OCTOBER 29, 2010

  
JAMES B. NICHOLSON, Chair

  
SARAH B. HIRAKAMI, Member

  
NORMAN K. KATO, II, Member

## State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813  
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 0100 0005 8250 7685

---

### Citation and Notification of Penalty

---

To:  
Best Farms Inc  
and its successors  
P O Box 83  
Kamuela, HI 96743

Inspection Number: 313078818  
Inspection Date(s): 02/17/2010- 02/17/2010  
Issuance Date: 07/12/2010  
OSHC ID: X8851  
Optional Report No.: 01210  
Inspection Type: Programmed Planned  
Scope of Inspection: Comprehensive Inspection

Inspection Site:  
66-1411 Lalamilo Farm Lot Rd  
Kamuela, HI 96743

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

## ABATEMENT CERTIFICATION

PEARL IMADA IBOSHI, DIRECTOR  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

Best Farms Inc  
P O Box 83  
Kamuela, HI 96743

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_.  
How corrected: \_\_\_\_\_.

I attest that the information contained in this document is accurate and that the affected employees and their  
representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name



## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 07/12/2010. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.





## Citation and Notification of Penalty

Company Name: Best Farms Inc  
Inspection Site: 66-1411 Lalamilo Farm Lot Rd, Kamuela, HI 96743

---

### Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1910.134(c)(2)(ii) [Refer to chapter 12-64.1, HAR] was violated because:

An employee using a 3M cartridge respirator while conducting spraying operations was not provided with the required medical evaluation.

29 CFR 1910.134(c)(2)(ii) states "In addition, the employer must establish and implement those elements of a written respiratory protection program necessary to ensure that any employee using a respirator voluntarily is medically able to use that respirator, and that the respirator is cleaned, stored, and maintained so that its use does not present a health hazard to the user. Exception: Employers are not required to include in a written respiratory protection program those employees whose only use of respirators involves the voluntary use of filtering facepieces (dust masks)."

Location: Farm fields

Date By Which Violation Must be Abated:	08/16/2010
Penalty:	\$ 375.00

---

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Best Farms Inc  
Inspection Site: 66-1411 Lalamilo Farm Lot Rd, Kamuela, HI 96743

---

#### Citation 1 Item 2 Type of Violation: **Serious**

HAR §12-80.1-1(m)(1) was violated because:

An operator of a Ford tractor with a fertilizer spreader attachment was exposed to the unguarded power take off shaft and could get seriously injured.

§12-80.1-1(m)(1) states "All power take-off shafts, including rear, mid-, or side-mounted shafts, shall be guarded either by a master shield as provided in subsection (i) (2) above or other protective guarding."

Location: Storage area

Date By Which Violation Must be Abated:	08/16/2010
Penalty:	\$ 375.00

#### Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.67(c)(2)(v) [Refer to chapter 12-83.1, HAR] was violated because:

Employees working from the basket on a Genie aerial lift do not use a safety body belt with a lanyard attached to the boom or basket and they could get seriously injured.

29 CFR 1910.67(c)(2)(v) states "A body belt shall be worn and a lanyard attached to the boom or basket when working from an aerial lift."

Location: Farm

Date By Which Violation Must be Abated:	07/20/2010
Penalty:	\$ 300.00

---

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Best Farms Inc  
Inspection Site: 66-1411 Lalamilo Farm Lot Rd, Kamuela, HI 96743

---

#### Citation 2 Item 1 Type of Violation: Other

29 CFR 1910.157(d)(2) [Refer to chapter 12-63.1, HAR] was violated because:

Portable fire extinguishers were not provided in an area where the potential for Class A fires existed.

29 CFR 1910.157(d)(2) states "The employer shall distribute portable fire extinguishers for use by employees on Class A fires so that the travel distance for employees to any extinguisher is 75 feet (22.9 m) or less."

Location: Warehouse

Date By Which Violation Must be Abated:	07/20/2010
Penalty:	\$ 0.00

#### Citation 2 Item 2 Type of Violation: Other

29 CFR 1910.157(d)(4) [Refer to chapter 12-63.1, HAR] was violated because:

No fire extinguisher was available in an area with Class B fire hazards.

29 CFR 1910.157(d)(4) states "The employer shall distribute portable fire extinguishers for use by employees on Class B fires so that the travel distance from the Class B hazard area to any extinguisher is 50 feet (15.2 m) or less."

Location: Diesel fuel dispensing area

Date By Which Violation Must be Abated:	07/20/2010
Penalty:	\$ 0.00

---

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Best Farms Inc  
Inspection Site: 66-1411 Lalamilo Farm Lot Rd, Kamuela, HI 96743

---

#### Citation 2 Item 3 Type of Violation: Other

29 CFR 1928.51(b)(2)(i)[A] [Refer to chapter 12-73.1, HAR] was violated because:

A John Deere front end loader was not provided with seatbelts.

29 CFR 1928.51(b)(2)(i)[A] states "When ROPS are required by this section, the employer shall: Provide each tractor with an operational seatbelt which meets the requirements of this paragraph."

Location: Farm field

Date By Which Violation Must be Abated:	08/16/2010
Penalty:	\$ 0.00

#### Citation 2 Item 4 Type of Violation: Other

29 CFR 1928.51(b)(2)(i)[B] [Refer to chapter 12-73.1, HAR] was violated because:

The employer did not ensure that the tractor operator of a 55-56 DT Fiat tractor was confined to his seat with his seat belt.

29 CFR 1928.51(b)(2)(i)[B] states "Ensure that each employee tightens the seatbelt sufficiently to confine the employee to the protected area provided by the ROPS."

Location: Farm Field

Date By Which Violation Must be Abated:	07/20/2010
Penalty:	\$ 0.00

---

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Best Farms Inc  
Inspection Site: 66-1411 Lalamilo Farm Lot Rd, Kamuela, HI 96743

---

#### Citation 2 Item 5 Type of Violation: Other

29 CFR 1910.253(b)(4)(iii) [Refer to chapter 12-78.2, HAR] was violated because:

An oxygen cylinder was stored next to a acetylene cylinder.

29 CFR 1910.253(b)(4)(iii) states "Oxygen cylinders in storage shall be separated from fuel-gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet (6.1 m) or by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour."

Location: Warehouse

Date By Which Violation Must be Abated:	07/20/2010
Penalty:	\$ 0.00

#### Citation 2 Item 6 Type of Violation: Other

29 CFR 1910.244(a)(1)(ii) [Refer to chapter 12-79.1, HAR] was violated because:

The rated load was not legibly and permanently marked on a hydraulic jack.

29 CFR 1910.244(a)(1)(ii) states "The rated load shall be legibly and permanently marked in a prominent location on the jack by casting, stamping, or other suitable means."

Location: Warehouse

Date By Which Violation Must be Abated:	07/20/2010
Penalty:	\$ 0.00

---

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Best Farms Inc  
Inspection Site: 66-1411 Lalamilo Farm Lot Rd, Kamuela, HI 96743

---

#### Citation 2 Item 7 Type of Violation: Other

29 CFR 1910.212(b) [Refer to chapter 12-80.1, HAR] was violated because:

A Amrox drill press was not securely anchored to prevent walking or movement.

29 CFR 1910.212(b) states "Anchoring fixed machinery. Machines designed for a fixed location shall be securely anchored to prevent walking or moving."

Location: Warehouse

Date By Which Violation Must be Abated:	07/20/2010
Penalty:	\$ 0.00

#### Citation 2 Item 8 Type of Violation: Other

29 CFR 1910.303(f)(2) [Refer to chapter 12-89.1, HAR] was violated because:

A circuit breaker panel did not have the breakers marked to indicate the purposes.

29 CFR 1910.303(f)(2) states "Services, feeders, and branch circuits. Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident."

Location: Storage-seedling Prep area

Date By Which Violation Must be Abated:	07/20/2010
Penalty:	\$ 0.00

---

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Best Farms Inc  
Inspection Site: 66-1411 Lalamilo Farm Lot Rd, Kamuela, HI 96743

---

#### Citation 2 Item 9 Type of Violation: Other

29 CFR 1910.1200(e)(1) [Refer to chapter 12-203.1, HAR] was violated because:


A written hazard communication program was not developed or implemented, and a list of the hazardous chemicals known to be present was not available.

29 CFR 1910.1200(e)(1) states "Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information & training will be met, and which also includes the following:

- (i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas)."

Location: Farm

Date By Which Violation Must be Abated:	08/02/2010
Penalty:	\$ 0.00

  
PEARL IMADA IBOSHI  
Director

---

---

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.